IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 2237 OF 1983

Union Bank of India .... Plaintiffs.

vs.

K.S. Khanna/ .. Defendants.

Mr. A.V. Joshi i/by Mulla & Mulla

for the plaintiffs.

CORAM : S.U.KAMDAR, J.

DATE : 21st June, 2005.

P.C.

. The present suit has been filed by the plaintiffs for recovery of sum of Rs. 3,11,859.85 with further interest at the rate of 11% per annum with quarterly rests from the date of the suit till payment.

2. The plaintiffs is the financial corporation and inter alia carries on business of granting loans to various parties. It is the case of the plaintiffs that sometime in or about 1970, the defendant approached the plaintiffs and requested for term loan facility and in respect of the same

the plaintiffs agreed to grant the facility to the extent of Rs.2.50 lakhs. The defendant in consideration of availing of the said loan facility executed a demand promissory note dated 2.10.1970, agreement of hypothecation dated 2.10.1970. The defendant availed of the said loan facility however failed to repay the same on due date as per the terms and conditions of the sanction of the loan. It is the case of the plaintiffs that the defendant has confirmed the liability by various confirmations dated 19.8.1971, 28.1.1973, 26.4.1974, 31.7.1974, 23.7.1974, 23.7.1975 and 28.8.1977. Subsequently on or about 7.2.1978, the defendant requested for extension of the facility and in consideration thereof renewed the said documents on 7.2.1978. It is the case of the plaintiff that the defendant paid the instalments from time to time upto February 1982 and acknowledged the liability by various acknowledgements. However, thereafter the account of the defendant was irregular and the instalment amount became due and payable but not paid by the defendant from time to time. Accordingly, on 18.9.1981 the advocate of the plaintiffs address a letter to the defendant calling upon the defendant to pay a sum of Rs. 2,63,133.32 along with interest at the rate of 11% per annum. There is no reply. Thereafter on 9.2.1982, the defendant forwarded a cheque for Rs. 2,037.77 claiming that the said amount is payable in full and final settlement of

the term loan account. However, the plaintiffs did not accept the said condition and that according to the plaintiffs there is an amount of Rs.2,59,009.35 remaining outstanding and payable by the defendant. Thereafter an Advocate's notice was issued on 5.10.1982 claiming the said amount with further interest thereon. However, the defendant failed and neglected to repay the same. In view thereof, the plaintiff has filed the present suit in November, 1983 for the recovery of the sum of Rs. 3,11,859.85 as due and payable as on the date of the suit on the foot of the account maintained by the plaintiff in the usual course of business of the defendant.

3. By an order dated 19.10.2002 this Court appointed Mr. K.G. Munshi as Commissioner for recording evidence. However, Mr. Munshi has filed his report inter alia stating that in the present matter neither of the parties have commenced the evidence at all and in view thereof he is unable to record evidence in the matter. The matter was on board on 4.5.2005 when the advocate for the defendant sought discharge and it is recorded that the discharge was granted. This matter was before me on earlier occasion. I directed the plaintiffs to give notice to the defendant. Pursuant thereto, the plaintiffs have given notice dated 18.6.2005 to the defendant pointing out that the matter has been placed for hearing and final disposal. Inspite of

the said notice none appears for the defendant. The plaintiffs have tendered the compilation of documents which inter alia includes the bank account maintained by the plaintiff in usual course of business which has been duly certified under the Banker's Act. At the foot of the plaintiffs account there is due and payable by the defendant to the plaintiffs an amount of Rs. 3,08,881.05. The plaintiffs have already filed affidavit of evidence on 16.8.2002 one Mr. V.L. Vaidya in examination-in-chief. In view of the fact that in spite of the notice the defendant is not appearing and there is no challenge to any of the documents, the said compilation of documents is taken on record and marked Exhibit P-1 collectively. The witness of the plaintiff is not cross-examined. In view thereof, the learned advocate for the plaintiffs is restricting his prayers to prayer clause (a) only. In view thereof, the suit is granted limited to prayer clause (a) only. Suit disposed of accordingly. No order as to costs.